IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2493 OF 2005

1. Ramesh R.Shirsat, residing at)
Block E-23, Himalaya Society)
Asalfa Village, Ghatkopar,)
Mumbai - 400 084.)
)
2. Vasudha Pandurang Ayre, 7/406,)
A, Kohinoor Milla Chawl, M.J.)
Phule Road, Naigaum, Dadar (E),)
Mumbai - 400 014.)..Petitioners.

V/s.

1. National Textile Corporation (South)
Maharashtra) Ltd., Apollo House,)
382 N.M.Joshi Marg, Chichpokli,)
Mumbai - 400 013.)
)
2. National Textile Corporation (North)
Maharashtra) Ltd., "NTC" House,)
Ballard Pier Narottom Morarjee Marg,)
Mumbai - 400 021.)
)
3. Kohinoor Mills, through its)
General Manager and successor in)
office, M.M.G.S. Marg, Naigaon,)
Mumbai - 400 014.)
)
4. Mangala wd/o. Chandrakant Nadkarni)
3A/19, Dastur Wadi, Behind Urdu)
School, Naigaon, Cross Road, Dadar,)
Mumbai 400 014.)
)
5. Vaishali Gajana Chavan, R. No.3,)
Chawl No.1, Sambhaji Nagar, Ghatla)
Village, Near Karnataka High)
School, Chembur, Mumbai - 400 071.)
)
6. Dipika Dattaram Chavan, R. No.208,)
Chawl No.8, Lokmanya Priyardarshani)
Society, Kakasaheb Gadgil Marg,)
Near Tilak Bhavan, Dadar (W),)
Mumbai-400 025.)
)
7. Vilas Pandurang Ayare, 7/406, A)
Kohinoor Mill Chawl,M.J. Phule Marg)
Naigaum Dadar (E), Mumbai-400 014.)

8. Vaibhavi Vikas Mane, G-11, 2nd Floor,)
Janardan Apartment, Shankar Ghanekar)
Marg, Dadar(W), Mumbai-400 014)

9. Jitendra Pandurang Ayare,7/406, A,)
Kohinoor Mill Chawl,M.J. Phule Marg)
Naigaum Dadar (E), Mumbai-400 014.)..Respondents.

Mr.P.M.Patel for petitioner Nos.1 & 2.

Mrs.Meena H.Doshi for respondent Nos.1 to 3.

Ms.B.B.Dholakia for respondent Nos.4 to 9.

CORAM : J.P.DEVADHAR, J.

DATED : 31ST AUGUST, 2006.

P.C. :-

1. This petition is filed to challenge the order of the Industrial Court dated 11th March, 2005 whereby Misc. Application (ULP) No.26 of 2000 filed by the petitioners under section 50 of the Maharashtra Recognization of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ('MRTU & PULP Act, 1971' for short) has been rejected by the Industrial Court.

2. By an order dated 30th March 1998 the Complaint (ULP) No.741 of 1990 filed by Mr.Shirsat and Mr.Ahire was allowed and it was held that the respondent Nos.1 to 3 are guilty of unfair labour practice covered under item Nos.5

& 9 of Schedule IV of the MRTU & PULP Act, 1971 and the respondent Nos.1 to 3 were directed to assign work and pay to the complainants, wages and other benefits from 1/6/1990.

3. The said order has been partially implemented by the respondent Nos.1 to 3 by paying amount equivalent to 40% of the wages and other benefits to the petitioner No.1 from 1-6-1990 to 11-4-2000 and to petitioner No.2 (legal heir of Mr.Ahire) from 1-6-1990 to 14-7-1997. To recover the balance amount, the petitioners had filed Misc. (ULP) Application No.26/2000 in complaint (ULP) No.741 of 1990. By the impugned order dated 11th March, 2005, the Industrial Court rejected the application of the petitioners mainly on the ground that the petitioners had not filed their statement of calculations along with Misc. application.

4. On perusal of section 50 of the MRTU & PULP Act, 1971, it is seen that there is no obligation to file a statement of calculation along with the application seeking recovery certificate. Therefore, it was open to the petitioners to file a statement of calculation even after the application made under section 50 of the MRTU & PULP Act, 1971. In the present case, admittedly, the statement of calculation was filed on 8th March, 2001 and

there was ample time for the respondent Nos.1 to 3 to reflect upon the said claim. However, no such efforts were made by the respondent Nos.1 to 3 and by the impugned order passed on 11-3-2005 the Industrial Court rejected the application only on the ground that the statement of calculations were not annexed to the miscellaneous application.

5. By relying upon the decisions of the Apex Court in the case of **Regional Manager, SBI V/s. Rakesh Kumar Tewari** reported in **(2006) 1 Supreme Court Cases 530** and **U.P. State Brassware Corpn. Ltd. & Anr. V/s. Uday Narayan Pandey** reported in **(2006) 1 Supreme Court Cases 479**, it is contended by the advocate for respondent Nos.1 to 3 that the onus is on the claimant to establish that they were not gainfully employed during the period for which that wages are claimed. It is pointed out that Mr.Shirsat had not led any evidence to show that he was not gainfully employed during the relevant period. It is pointed out that Mr.Ahire in his evidence had admitted that he was gainfully employed for some time and, therefore, the Industrial Court was justified in rejecting the application. It is not necessary to deal with all these contentions in the present petition because, the dispute in the present case is not regarding the quantum but the rejection of the application on the ground that

statement of the calculations was not annexed to the application. As stated earlier, under section 50 of the MRTU & PULP Act, it is not mandatory that statement of calculation must be annexed to the application. Therefore, when the statement of calculation was submitted along with an affidavit, the Industrial Court was bound to consider the same and pass appropriate order determining the quantum of amount payable by the respondent Nos.1 to 3 to the petitioners.

6. In the result, the petition succeeds. The impugned order dated 11th March, 2005 is quashed and set aside. Matter is remanded back to the Industrial Court with directions to dispose of the Misc. (ULP) Application No.26 of 2000 filed by the petitioners in accordance with law, preferably within a period of 6 months from today. All contentions of both parties are kept open.

7. As Mr.Ahire is reported to be death, it would be open for the petitioners to amend the Miscellaneous Application pending before the Industrial Court by bringing his legal heirs on record.

8. Petition is disposed of. Rule is made absolute in terms of above with no order as to costs.

sd/-

(J.P. DEVADHAR, J.)